IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30-8-2007

Coram

The Honourable Mr.Justice K. VENKATARAMAN

WRIT PETITION No.20862 of 2007
and
M.P.No.1 of 2007

S.R.F. & S.R.F. Polymers Employees Union
(Regn.No.821/MDS),
rep. by its President V.Prakash,
Plot No.11, Bharathiar Street,
Vimalapuram, Manali,
Chennai 600 068. .. Petitioner

Vs.

1. State of Tamil Nadu,
   rep. by its Secretary,
   Department of Labour & Employment,
   Fort St. George,
   Chennai 600 009.

2. The Chief Inspector of Factories,
   Chepauk, Chennai 600 005.

3. The Inspector of Factories,
   Thiruvotriyur,
   Chennai 600 019.

4. M/s.S.R.F. Limited,
   rep. by its Vice President,
   Manali Industrial Area,
   Manali, Chennai 600 068. .. Respondents

Writ Petition filed under Article 226 of the Constitution of India praying to issue a writ of mandamus directing the respondents 1 to 3 to ensure that the provisions of Factories Act, 1948 are duly observed in the factory of the 4th respondent company at Manali and that the learners and contract workers are not engaged in direct manufacturing process in the factory.

For Petitioner : Mr.V.Prakash, S.C.
Party-in-person
For R-1 to R-3 : Mrs.Geetha Tamariaselvan,
Govt.Advocate.
For Respondent-4: Mr.Sanjay Mohan,
For M/s.S.Ramasubnramaiam & Associates
Mr.R.Ramesh Advocate Commissioner

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O R D E R

The petitioner-union has come forward with the present Writ Petition for Mandamus directing the respondents 1 to 3 to ensure that the provisions of the Factories Act, 1948 are duly observed in the factory of the 4th respondent company at Manali and that the learners and contract workers are not engaged in direct manufacturing processes in the factory and for issuance of other directions.

2. Short facts which are necessary for the disposal of the present Writ Petition are as follows:-

The case of the petitioner-Union is that the 4th respondent company has factory in Manali, Chennai which is engaged in the manufacture of nylon tyre fabric and nylon fabric for fishnets. The petitioner-Union is the only trade union operating in the factory and represents all the 244 permanent workers. On 15.12.2005, 150 trainees and apprentices were stopped from service and this has resulted in increase in work load of the reduced permanent workers. The 4th respondent-Management has been steadily reduced permanent work force engaged in the factory and there has been a simultaneous increase in the number of trainees in the factory called learners. The intention of the management is to gradually substitute the entire permanent work force in the factory with that of the learners and contract workers. Hence, in these circumstances, on 20.3.2007. the petitioner-Union made a representation to the Chief Inspector of Factories, Chennai, the second respondent herein, objecting to the engagement of learners in the factory in the place of permanent workers in gross violation of the provisions of the Factories Act and the Standing Orders of the company. In pursuance of the same, the Inspector of Factories, Thiruvotriyur, conducted an inspection of the factory. While so, the Inspector of Factories sent a letter dated 20.4.2007 stating that at the time of inspection of Manali factory of the 4th respondent company on 4.4.2007, there is no trainees or apprentices in the factory. It has been further stated that the issue of engagement of learners in direct manufacturing processes in the factory, the consequent violation of standing orders of the company and the reduction of permanent work force in the factory are all beyond the scope of his jurisdiction and the same has to be raised as an industrial dispute by the petitioner-Union before the appropriate authorities. Raising the plea that the Inspector of Factories has a statutory duty to ensure that the provisions of the Factories Act are duly complied with in the factory and are not violated in any manner, the petitioner has come forward with the present Writ Petition for the relief set out earlier.

3. The respondents 1 to 3 have filed the counter wherein it has been stated that the role of the Deputy Chief Inspector of Factories, Thiruvotriyur is confined to implement the provisions of the Factories Act, 1948 and the Rules framed thereunder which includes health, welfare and safety of workmen and other related regulations. The workman employed by the 4th respondent whether he is a learner or any other designation is not within the scope of the definition of "workmen" under the Factories Act. The petitioner, in the event of any

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dispute regarding these matters, can very well seek remedy by raising an industrial dispute under Section 2(k) of the Industrial Disputes Act, 1947. Basing on the representation given to the second respondent, the second respondent had instructed the Deputy Chief Inspector of Factories, Thiruvotriyur to take appropriate action regarding the complaint made by the petitioner. The Deputy Chief Inspector of Factories, Thiruvotriyur inspected the factory on 4.4.2007. Since the workers in the list given by the petitioner-Union were employed in the 4th respondent factory and their names are not in the muster roll and their pay slip was issued by the 4th respondent's Gummidipoondi unit and not by Manali unit, he has proceeded against the 4th respondent for contravention under Section 112/Rule 103 and various provisions of the Factories Act and the Rules. the proposal for prosecution against the 4th respondent has been forwarded to the 2nd respondent and charge sheet has been laid before the Chief Judicial Magistrate, Thiruvallur. Thus, the sum and substance of the counter affidavit of respondents 1 to 3 is that as far as the reduction of permanent workmen, violation of Standing Orders, induction of fresher and additional workload arising out of leave, not filling vacancies, it is outside the purview of the Factories Act and the remedy of the petitioner-Union is only to approach the appropriate Authority by raising industrial dispute.

4. Counter affidavit has been filed by the 4th respondent wherein it has been set out that the Writ Petition is not maintainable against the 4th respondent and the same is liable to be dismissed in limine. The 4th respondent used to take apprentices (learners/trainees) for one year for persons having technical qualification and 3 years for non-technical persons. Thus, they used to take up the trainees for specific period and are given on the job training in various Sections of the factory. Further, the 4th respondent entered into a memorandum of settlement dated 19.1.1995 reached under Section 12(3) of the Industrial Disputes Act, 1947 with the recognized union wherein it has been specifically agreed that the workmen and the union would not interfere with the existing apprenticeship scheme in view of the 4th respondent's commitment to provide training as contribution to the society. Later, apprentices were discontinued from the apprenticeship. Hence, it is not correct to state that the apprentice has replaced an existing employee as alleged by the petitioner-Union.

5. It has been further averred that to impart new technology, it requires special skills. Nettur Technical Training Foundation (NTTF) was formed inter alia to promote technical training in India and to support industries and institutes in dissemination of technical knowledge and skill. Thus, the management has decided to take apprentices (Learners/Trainees) and send them for training in the institute called NTTF. At NTTF, three tier training plan comprising of Basic skills, semi functional training and on the job training, to acquire the desired knowledge/skills. Therefore, it is misleading on the part of the petitioner-Union to say that the apprentices were stopped from service and there is steep increase in workload on the permanent workmen. It is not the intention of the management to substitute permanent work force with learners. It has been further averred that no contract labour is engaged in machine related activities. The further allegation that the management is engaging

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Learners in direct manufacturing process is contrary to facts. Thus, the sum and substance of the counter affidavit of the 4th respondent is that the apprentice scheme was not abolished and that there is no increase in work load upon the permanent workmen. It is not also the intention of the management to substitute the permanent work force with that of learners. The contract labour is not engaged in machine related activities.

6. On these background of pleadings, Mr.V.Prakash, the learned senior counsel appearing for the petitioner as party-in-person, submitted that the Inspector of Factories under the Factories Act, 1948 is empowered to inspect the factory premises for the purposes enumerated under the said Act. Further, Rule 13-A empowers the Inspector of Factories for the purpose of the execution of the provisions Act and the powers as enumerated in the said Rule. Further, the learned senior counsel contended that the letter issued by the Deputy Chief Inspector of Factories dated 20.4.2007 could not be taken as an order passed in order to challenge the same before the competent Court.

7. Per contra, Mr.Sanjay Mohan, the learned counsel appearing for the 4th respondent, contended as follows:-

(a) As far as the first portion of the order is concerned, namely, directing the respondents 1 to 3 to ensure that the provisions of the Factories Act 1948, the same are duly observed in the factory of the 4th respondent at Manali, there cannot be any grievance by the 4th respondent. But, the second portion of the relief that has been sought for by the petitioner-Union is outside purview of the Factories Act and the remedy of the petitioner-Union lies before the other Authority and the remedy of the petitioner is to take proceeding under the Industrial Disputes Act.

(b) Furthermore, the order of the Deputy Chief Inspector of Factories dated 20.4.2007 has to be challenged by the petitioner. Without challenging the said order, a mere writ petition for mandamus will not lie.

(c) The entire grievance of the petitioner as put forth in the affidavit in support of the Writ petition is a matter which has to be raised as industrial dispute and the respondents 1 to 3 have no jurisdiction for the the same. Further, the learned senior counsel submitted that the dispute that has been raised by the petitioner is pending before the Conciliation Officer and the remedy of the petitioner is to approach the Tribunal if there is a failure report filed by the Conciliation Officer.

8. Mrs.Geetha Tamaraiselvan, the learned Government Advocate appearing for the respondents 1 to 3, contended that the respondents have acted as per the powers given to them under the Factories Act and they cannot be expected to take action which is outside the purview of their powers enumerated under the Factories Act. The remedy of the petitioner lies before the other Authority which is constituted under the Factories Act.

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9. I have heard Mr.V.Prakash, the petitioner/party-in-person, Mrs.Geetha Tamaraiselvan, the learned Government Advocate appearing for the respondents 1 to 3 and Mr.Sanjay Mohan, the learned counsel appearing for the 4th respondent.

10. The grievance of the petitioner as could be seen from the affidavit is mainly on the following footing that the trainees/apprentices were stopped from service which resulted in the increase in the workload of the permanent workmen and the permanent workforce is steadily reduced. The intention of the management is gradually to substitute the entire permanent work force in the factory with that of learners and contract workers. With these backdrops, the petitioner has approached this Court for the relief set out earlier.

11. Section 2(k) of the Industrial Disputes Act, 1957 which reads as follows:-

> "Industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"

The above provision makes it very clear that if there is any dispute between employers and workmen which is connected with the employment or non-employment or the terms of employment, the employees can raise an industrial dispute under the said Act. In fact, the petitioner, according to the learned counsel appearing for the 4th respondent, has raised a dispute and the same is pending enquiry before the Conciliation Officer. This fact has been admitted by the petitioner in para 3 of the affidavit which reads as follows:-

> "In the year 2000, the permanent work force was further reduced to 330 workers by reason of the retirement, death, dismissal of workers, etc. 550 trainees were inducted in the year 2000. In the year 2005, the permanent work force was further reduced to 268 and there were 210 trainees/apprentices with 35 trainees brought in from the Gummidipoondi factory of the respondent company where they had been appointed. On 15.12.2005, 150 trainees and apprentices were stopped from service and this resulted in an increase in the work load of the reduced permanent workers. I submit that an industrial dispute has been raised by the petitioner Union regarding the reduction in manpower and the said dispute is pending reference."

12. Thus, the grievance of the petitioner regarding reduction in manpower, employment of learners and contract workers, etc. are pending reference before the Conciliation Officer and the petitioner can very well agitate the same before the Conciliation Officer. When the matter in issue is within the purview of Industrial Disputes Act, the

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respondents 1 to 3 have no role to play in those matters. What the Authority constituted under the Industrial Disputes Act has to do is sought to be directed to be carried out by the respondents 1 to 3 whose powers are defined under the Factories Act, 1948. The powers of Inspectors constituted under the Factories Act 1948, is defined under Section 9 of the said Act which nowhere calls upon them to decide the matter in issue which has been raised by the petitioner.

13. As rightly pointed out by Mr.Sanjay Mohan, the learned counsel appearing for the 4th respondent, in the Factories Act, nowhere the adjudicatory power has been given to the Inspectors of Factories in the said enactment. The Act speaks only the welfare measures and the safety measures and not more than that. It has to be further seen that there exists a Standing Orders for the 4th respondent-company which defines the classification of employees and other definition. The members of the petitioner-Union is governed by the said Standing Orders. Furthermore, the Deputy Chief Inspector of Factories, Thiruvottiyur has proceeded against the 4th respondent for contravention of certain laches and charge-sheet has been laid against the 4th respondent before the Chief Judicial magistrate, Thiruvallur. While so, there could be no complaint against the respondents 1 to 3 for failure to take action which is not within their purview, but it is within the purview of the Officers constituted under the Industrial Disputes Act. This is also fortified, if the Factories Act, 1948 and the Rules framed thereunder are looked into. As stated already, Section 9 of the Factories Act defines the powers of Inspectors and Rule 13-A of the said Rules deals with the same. Nowhere either under section 9 of the Factories Act or under Rule 13-A of the Rules framed under the said Act contemplates that the respondents 1 and 3 to decide the matter which has been sought to be raised by the petitioner against the 4th respondent.

14. The petitioner/party-in-person has relied on the decision reported in 2001(7) S.C.C. 659 (S.M.DATTA v. STATE OF GUJARAT) and contended that the Factories Act is a welfare legislation and a complete code in itself and the Act and the Rules and the forms prescribed by the State Government have to be read in consonance to give efficacy to the intent of the legislature. That is the case where the complaint filed by the Inspector of Factories alleging non-compliance of section 63 of the Factories Act by the company sought to be quashed before the High court in exercise of its criminal revisional jurisdiction and the Apex Court in the facts and circumstances of that case has held that the Factories Act which is a benevolent piece of legislation and the High court is justified in refusing to quash the complaint at the initial stage. However, the case on hand is totally on a different footing and hence, the said decision will not be applicable to the facts and circumstances of this case.

15. Yet another decision that has been relied on by the petitioner/party-in-person is reported in AIR 1984 S.C. 802 (BANDHUA MUKTI MORCHA v. UNION OF INDIA). The consideration in the said decision was about the locus standi of a person who has filed the public interest litigation regarding bonded labour. Hence, the said judgment will have no bearing on the present case, since the issue is entirely different.

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16. Hence, for the reasons stated above, I am not inclined to grant the relief that has been sought for by the petitioner in the Writ Petition.

17. In the result, the Writ Petition stands dismissed. Consequently, M.P.No.1 of 2007 is closed. However, there is no order as to costs.

Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary,
   State of Tamil Nadu,
   Department of Labour & Employment,
   Fort St. George,
   Chennai 600 009.

2. The Chief Inspector of Factories,
   Chepauk, Chennai 600 005.

3. The Inspector of Factories,
   Thiruvotriyur, Chennai 600 019.

1 CC To Mr.V.Prakash, Advocate, SR NO.54171.
1 CC To M/s.Rama Subramaniam & Associates, Advocate, SR NO.54548.
1 CC to the Government Pleader, SR NO.54405.

W.P.No.20862 of 2007;&
M.P.No.1 of 2007

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